

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
AT ABINGDON**

JAMES EDWARD HERZOG, JR.,)	
)	
Plaintiff,)	
)	Case No. 1:24cv11
v.)	
)	
HR BRISTOL, LLC, HR BRISTOL)	
MANAGER, LLC, and)	
JANE DOE (Leslie [last name unknown]),)	
)	
Defendants.)	

NOTICE OF REMOVAL

Defendants HR Bristol Manager, LLC (“HR Bristol Manager”) and HR Bristol, LLC (“HR Bristol”), by and through its undersigned counsel, hereby provide notice of removal pursuant to 28 U.S.C. §§ 1331, 1441, and 1446 of the above-captioned case from the Circuit Court for the City of Bristol, Virginia, to the United States District Court for the Western District of Virginia. The grounds for removal are as follows:

1. On April 19, 2023, Plaintiff James Herzog (“Plaintiff”) filed his Complaint for Damages (“Complaint”) in the action *James Herzog v. HR Bristol, LLC, HR Bristol Manager, LLC, and Jane Doe (Leslie [last name unknown])*, in Circuit Court for the City of Bristol, Virginia, and the case was docketed as CL23000239-00.

2. Although no completed summons or return of service has been filed by Plaintiff, ten months later, on February 21, 2024, HR Bristol Manager was served with a copy of the summons and above-referenced Complaint. A copy of the summons and Complaint are attached as Exhibit A.

3. Upon information and belief, neither HR Bristol nor Defendant Jane Doe have been served with a copy of the summons and Complaint.

4. Prior to serving the Complaint on HR Bristol Manager, on February 13, 2024, Plaintiff filed a Motion for Leave to File First Amended Complaint, attaching a copy of a new Complaint (the “Motion to Amend” and “Amended Complaint”).

5. Plaintiff served the Motion to Amend on HR Bristol Manager alongside the initial Complaint and summons, also on February 21, 2024. Upon information and belief, neither HR Bristol nor Defendant Jane Doe have been served with the Motion to Amend or Amended Complaint.

6. On March 7, 2024, the Circuit Court for the City of Bristol granted the Motion to Amend. A copy of the Docket Report from March 11, 2024 is attached as Exhibit B. Thus, the operative complaint in this matter is the Amended Complaint.

7. No other pleadings or papers have been filed in this litigation.

8. Under 28 U.S.C. § 1446(b), “[t]he notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based.” Because HR Bristol Manager was served with the initial Complaint on February 21, 2024, and the Amended Complaint was not granted until March 7, 2024, this removal is timely, as it is being filed within thirty days of service of the initial Complaint and the Amended Complaint, both of which were removable. *See* Exhibit A.

9. By filing a Notice of Removal in this matter, Defendants do not waive either Defendant’s right to object to service of process, the sufficiency of process, jurisdiction over the

person, or venue, and Defendants specifically reserve their right to assert any defenses and/or objections to which they may be entitled.

10. Venue is proper in this Court, as any civil action for which a district court has original jurisdiction may be removed by the defendant to the district court for the district and division embracing the place where such action is pending. 28 U.S.C. § 1441(a).

11. Because this Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331, as will be discussed more fully below, and Defendants have satisfied the procedural requirements for removal pursuant to 28 U.S.C. §§ 1441 and 1446, this case can be properly removed to this Court.

FEDERAL QUESTION JURISDICTION

12. The Amended Complaint asserts claims for age discrimination, harassment, and retaliation under the Age Discrimination in Employment Act 29 U.S.C. § 621, *et seq.* (the “ADEA”) and for disability discrimination, failure to accommodate, interference, and retaliation under the Americans with Disabilities Act as modified by the Americans with Disabilities Act Amendments Act of 2008, 42 U.S.C. § 12101, *et seq.* (“ADA”). *See* Amended Complaint, Counts I, II, III, IV, VI, and VII. This Court has original jurisdiction over these claims pursuant to its federal question jurisdiction, 28 U.S.C. § 1331.

13. The Amended Complaint also asserts claims under Virginia common law for assault and battery and claims under the Virginia Human Rights Act, Va. Code § 2.2-3905(B) (“VHRA”) for age and disability discrimination, harassment, and retaliation. *See* Amended Complaint, Counts V, VIII, IX, and X. This Court has supplemental jurisdiction over these claims pursuant to 28 U.S.C. § 1367(a) because these claims are “so related to the [ADEA and ADA] claims in the action within such original jurisdiction that they form part of the same case or

controversy under Article III of the United States Constitution.” As noted by the Supreme Court, “[s]ection 1367(a) is a broad grant of supplemental jurisdiction over other claims within the same case or controversy, as long as the action is one in which the district courts would have had original jurisdiction.” *Exxon Mobile Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 558 (2005). It is well established that federal district courts have supplemental jurisdiction over state law claims that share a “common nucleus of operative fact” with federal claims. *White v. County of Newberry*, 985 F.2d 168, 171 (4th Cir. 1993).

14. Plaintiff’s claims share a common nucleus of operative facts, as the assault and battery claim arises from the same set of facts from which the Plaintiff’s federal claims arise, *i.e.* his employment with HR Bristol Manager. The basis for Plaintiff’s state law claims for age and disability discrimination, harassment, and retaliation are identical to the basis for the federal age and disability discrimination, harassment, and retaliation claims set forth in the Amended Complaint.

15. Accordingly, this Court has federal question jurisdiction over Plaintiff’s ADEA and ADA claims pursuant to 28 U.S.C. § 1331 and supplemental jurisdiction over Plaintiff’s state claims under 28 U.S.C. § 1367(a), in both the Complaint and proposed Amended Complaint.

PROCEDURAL REQUIREMENTS

16. In compliance with 28 U.S.C. § 1446(a), this notice of removal is accompanied by copies of the following:

Exhibit A: All documents filed in the state court action

Exhibit B: Docket Summary from the state court action, showing all documents and the date filed in state court

Exhibit C: A copy of the Notice of Filing of Removal that has been filed in the state court action

17. In compliance with 28 U.S.C. § 1446(d), Defendants HR Bristol and HR Bristol Manager have served Plaintiff with written notice of the removal of this action.

WHEREFORE, Defendants HR Bristol and HR Bristol Manager request that in the above-captioned action now pending in the Circuit Court for the City of Bristol, Virginia be removed to the United States District Court for the Western District of Virginia.

Respectfully submitted,

/s/ R. Andrew Hutchinson

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CERTIFICATE OF SERVICE

I certify that on March 11, 2024, pursuant to the Federal Rules of Civil Procedure, a true and correct copy of the foregoing document has been served upon all counsel of record by ECF Filing System, and by U.S. Mail, postage prepaid, and email to:

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